

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-42934 of 2007

.....

Date of decision:18.12.2007

B.M. Moudgil and another

.....Petitioners

v.

State of Punjab and another

.....Respondents

....

Present: Mr. Rajesh Gupta, Advocate for the petitioners.

Mr. I.P.S. Sidhu, Senior Deputy Advocate General, Punjab  
for the respondent-State.

Mr. Mukhtiar Singh, Advocate for respondent No.2.

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**S.S. Saron, J.** (Oral)

Reply by way of affidavit of Mr. Jaswinder Singh, PPS, DSP  
City-I, Ludhiana on behalf of respondent No.1 and written statement by way  
of affidavit of Subhash Gupta (respondent No.2) filed in Court today are  
taken on record.

Heard learned counsel for the parties.

The petitioners by way of the present petition under Section  
482 of the Code of Criminal Procedure ('Cr.P.C.' – for short) seek quashing  
of the FIR No.28 dated 5.5.2006 registered at Police Station Kotwali,  
Ludhiana for the offences under Sections 406, 420, 465, 468 and 120-B IPC  
on the basis of compromise that has been entered into between the parties.

The FIR has been registered on the complaint made by Subhash  
Gupta (respondent No.2) partner of M/s Kaka Ram Babu Ram Aggarwal,

Ludhiana (respondent No.2). It is submitted that the complainant firm M/s Kaka Ram Babu Ram Aggarwal, Saban Bazar, Ludhiana is a registered partnership firm. The petitioners are Directors of the firm of the Makers Private Limited, Focal Point, Ludhiana. Dies and Chemicals were being purchased by the petitioner-firm from the complainant-firm on credit for the past several years and part payment through account payee's cheques were made from time to time. Upto 30.3.2004 goods more than Rs.13,54,440/- were purchased by the petitioner-firm out of payment of Rs.8,80,000/- had been made. However, the balance payment was not made. Towards part payment of the balance amount, the petitioners sent a cheque dated 30.6.2004 which, it is alleged, is with mala fide intention to cause wrongful loss to the complainant and wrongful gain to themselves in conspiracy with other employees to cheat the complainant. The cheque, when it was presented for encashment, was not honoured and vide memo dated 30.6.2004 and again on 2.12.2004, it was returned with the remarks "Drawer's signatures/authority to operate account not received". Therefore, it is alleged that the offence had been committed of cheating which was with a mala fide intention. It was, therefore, prayed that a case for the offence under Sections 420 and 120-B IPC may be registered against the petitioners. Thereafter, the petitioners and respondent No.2 have compromised the matter and have settled the accounts of respondent No.2. Apart from filing the present FIR, the respondent No.2 had also filed a suit for recovery against the petitioners. The suit was compromised between the parties on 21.7.2007 before the Lok Adalat. The suit filed by respondent No.2 has been withdrawn. It is, therefore, prayed that the proceedings in

pursuance of the impugned FIR may be quashed.

In terms of the reply filed by respondent No.1, it is stated that the challan has been filed in the Court and the matter is pending before the Court. Therefore, the petition is liable to be dismissed. Respondent No.2 in his reply has accepted the position that with the intervention of respectable the matter has been compromised and respondent No.2 has no objection to the quashing of the FIR.

After giving my thoughtful consideration to the matter and perusing the record, it may be noticed that the dispute between the parties is with regard to money transactions and is primarily civil in nature. It is admitted position between the parties that though the challan has been filed, however, charge has not so far been framed in the case. The challan has been, filed in terms of the reply filed by the State, for the offences under Sections 406, 420, 465, 468 and 120-B IPC. It is well known that offences under Sections 406 and 420 IPC are mutually exclusive and the accused cannot be tried for both of them at the same time. Besides, the dispute, as already noticed, is primarily of a civil nature. The parties have compromised the matter. The civil suit filed by respondent No.2 for recovery of the amount has also been withdrawn. Therefore, no useful purpose would be served in continuing with the proceedings in the FIR as the end result is already known. In Kulwinder Singh and others v. State of Punjab and another, 2007 (3) RCR (Cr.) 1052, a five Judges Bench of this Court has held as under:-

“The compromise, in a modern society, is the sine qua non of harmony and orderly behaviour. It is the soul of justice and if the power under Section 482 of the Cr.P.C. is used to enhance

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such a compromise which, in turn, enhances the social amity and reduces friction, then it truly is “*finest hour of justice*”. Disputes which have their genesis in a matrimonial discord, landlord-tenant matters, commercial transactions and other such matters can safely be dealt with by the Court by exercising its powers under Section 482 of the Cr.P.C. in the event of a compromise, but this is not to say that the power is limited to such cases. There can never be any such rigid rule to prescribe the exercise of such power, especially in the absence of any premonitions to forecast and predict eventualities which the cause of justice may throw up during the course of a litigation.”

....(Emphasis added)

In view of the above, it would be just and expedient to terminate the proceedings by quashing the impugned FIR.

Consequently, the criminal miscellaneous petition is allowed and the impugned FIR No.28 dated 5.5.2006 registered at Police Station Kotwali, Ludhiana for the offences under Sections 406, 420, 465, 468 and 120-B IPC and all consequent and subsequent proceedings arising therefrom shall stand quashed.

December 18, 2007.

**(S.S. Saron)**  
**Judge**

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